# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:18-cv-00084-FDW

RODNEY A. KOON,	)	
Petitioner,	)	
	)	
vs.	)	ORDER
ERIK A. HOOKS, <sup>1</sup>	)	
Respondent.	)	
	)	

**THIS MATTER** is before the Court upon Petitioner Rodney A. Koon's pro se Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254. (Doc. No. 12.)

## I. RELEVANT PROCEDURAL HISTORY

Petitioner is a prisoner of the state of North Carolina, who, on October 24, 2016, filed a Complaint pursuant to 42 U.S.C. § 1983 and a motion to proceed in forma pauperis in the United States District Court for the Eastern District of North Carolina. (Doc. Nos. 1, 4.) On May 11, 2017, after conducting a frivolity review, the Court for the Eastern District dismissed the § 1983 Complaint without prejudice and denied the in forma pauperis motion. (Doc. No. 10.)

Petitioner filed a motion for reconsideration on December 15, 2017, requesting that his § 1983 Complaint be construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and amended to include an ineffective assistance of counsel claim. (Doc. No. 12.) The

<sup>&</sup>lt;sup>1</sup> Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts requires that a petition for writ of habeas corpus name the person who has immediate custody of the petitioner as the respondent in the action. Rule 2(a), 28 U.S.C. folio § 2254; see also Rumsfeld v. Padilla, 542 U.S. 426, 434–47 (2004) (stating the writ should be directed to the "person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge."). Erik A. Hooks, Secretary of the North Carolina Department of Public Safety, is the proper respondent in this habeas action.

Court for the Eastern District granted Petitioner's motion, ordered that the action be re-instated as a § 2254 petition for writ of habeas corpus, and that it be transferred to this Court where venue is proper. (Doc. No. 13.) The action was transferred here on March 30, 3018. (Doc. No. 14.)

#### II. RULE 2

Rule 2(d) of the Rules Governing Section 2254 Cases in the United States District Courts requires that habeas petitions follow a specific format. Petitioner's habeas petition does not comply with that requirement. The Court will provide Petitioner an opportunity to comply with Rule 2(d). The Clerk of Court shall be directed to send Petitioner the correct form to complete, sign, and return. Petitioner shall be given a set amount of time to return the completed and signed form. Failure to return the form shall result in dismissal of this action without prejudice and without further notice from the Court.

## III. IN FORMA PAUPERIS

Federal law requires a petitioner seeking habeas review of his state conviction and/or sentence in federal district court pay a \$5.00 filing fee or be granted leave to proceed without prepayment of fees and costs. See 28 U.S.C. §§ 1914 and 1915. Rule 3(a)(2) of the Rules Governing Section 2254 Cases requires that a habeas petitioner seeking indigent status file "a motion for leave to proceed in forma pauperis, the affidavit required by . . . § 1915, and a certificate from the warden or other appropriate officer of the place of confinement showing the amount of money or securities that the petitioner has in any account in the institution."

The Court for the Eastern District of North Carolina denied Petitioner's in forma pauperis motion. (Doc. No. 10.) It did not reverse that decision when it re-opened this action. (Doc. No. 13.) Accordingly, Petitioner must either pay the \$5.00 filing fee or file another in forma pauperis motion.

# IT IS, THEREFORE, ORDERED that:

- The Clerk of Court shall send Petitioner a copy of this Order, a blank 28 U.S.C. §
   2254 form, and a blank in forma pauperis application;
- 2. The Clerk of Court shall substitute Erik A. Hooks for State of North Carolina and Pat Hansen as the respondent in this action; and
- 3. Petitioner shall have twenty-one (21) days from entrance of this Order to: 1) pay the \$5.00 filing fee or file the in forma pauperis application, and 2) complete the \$ 2254 form, sign it under penalty of perjury, and mail it back to the Clerk of Court for the Western District of North Carolina.

Signed: April 2, 2018

Frank D. Whitney

Chief United States District Judge